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15
16 **UNITED STATES DISTRICT COURT**
NORTHERN DISTRICT OF CALIFORNIA, OAKLAND DIVISION

17
18 In re College Athlete NIL Litigation

Case No. 4:20-cv-03919-CW

19 **DECLARATION OF MACK RHOADES**

20 1. I make this declaration of my own personal knowledge and, if called on to do so,
21 could testify competently and under oath to the facts stated herein.

22 2. I have had the honor of leading four NCAA Football Bowl Subdivision
23 intercollegiate athletic programs, including currently serving as the Vice President and Director of
24 Intercollegiate Athletics at Baylor University, which is located in Waco, Texas.

25 3. I have served in my current role at Baylor since July of 2016. Prior to coming to
26 Baylor, I served as the Director of Athletics at the University of Missouri - Columbia, a member of
27

1 the Southeastern Conference. Before joining the University of Missouri in 2015, I served for over
2 five years as the Vice President of Intercollegiate Athletics at the University of Houston (2009-
3 2015) of the American Athletic Conference. During my time at Houston, I served as chair of the
4 American Athletic Conference Athletics Directors Committee and in other conference leadership
5 roles.

6 4. I spent 3 years as the Director of Intercollegiate Athletics at the University of Akron
7 (2006-2009) of the Mid-American Conference and 9 years in the sports departments at the
8 University of Texas – El Paso (1998-2006) and Marquette University (1997-98), after beginning
9 my career at Yale (1996-1997).

10 5. I received a bachelor's degree in Health Sciences from the University of Arizona in
11 1993 and a Master of Science degree in Athletics Administration/Sports Management from Indiana
12 University in 2002.

13 6. Baylor has been a member of The Big 12 Conference, Inc. (the "Big 12") since the
14 Big 12 began athletic competition in 1996. In the 2020-2021 season, our men's basketball team
15 won its first Big 12 regular season championship and went on to win its first ever NCAA National
16 Championship. Academically, in 2020-21 Baylor student-athletes set a school record with an
17 overall score of 94 in Graduation Success rate that led the Big 12 for the seventh-straight year and
18 ranked 10th nationally among schools in the 5 largest collegiate sports conferences—the
19 "Autonomy 5" or "A-5" conferences. In addition, in 2021 I was honored to be selected as sports
20 Business Journal's Athletics Director of the Year and was chosen as the National Association of
21 Collegiate Directors of Athletics Under Armour Athletics Director of the Year.

22 7. As Director of Intercollegiate Athletics, I am responsible for overseeing all aspects
23 of Baylor's varsity sports programs. This year, Baylor sponsored teams in 19 sports.

24 8. I understand that the Plaintiffs' expert witnesses in this case have opined that in the
25 absence of NCAA rules preventing it, each A-5 conference defendant would have, at least since the
26 fall semester of 2016, paid certain student-athletes a portion of the rights fees paid to the A-5
27 conferences under contracts with its media partners (such as ESPN/ABC or FOX) as compensation
28

1 for the use of the student-athletes name, image, and likeness ("NIL") rights. Specifically, as I
 2 understand it, Plaintiffs' expert witnesses think that A-5 conferences, including the Big 12, would
 3 have made NIL payments to student-athletes as follows:

- 4 a. Each conference would determine the total broadcast rights fees received from
 5 media partners, the College Football Playoff, and the NCAA men's basketball
 6 tournament.
- 7 b. Each academic year, all scholarship football players at conference member
 8 institutions would be paid an equal share of 10% of the conference's broadcast rights
 9 fees that Plaintiffs contend are attributable to football, which is 75% of unsegregated
 10 rights fees, or 7.5% of the conference's total rights fees.
- 11 c. Each academic year, all scholarship men's basketball players at conference member
 12 institutions would be paid an equal share of 10% of the conference's broadcast rights
 13 fees that Plaintiffs contend are attributable to men's basketball, which is 15% of
 14 unsegregated rights fees, or 1.5% of the conference's total rights fees.
- 15 d. Each academic year, all scholarship women's basketball players at conference
 16 member institutions would be paid an equal share of 10% of the conference's
 17 broadcast rights fees that Plaintiffs contend are attributable to women's basketball,
 18 which is 5% of unsegregated rights fees, or 0.5% of the conference's total rights
 19 fees.

20 9. I also understand that Plaintiffs' expert witnesses assume that 5% of the value of
 21 unsegregated broadcast rights fees a conference receives are attributable to the remaining games
 22 and events that the conference sponsors.

23 10. As an example, under Plaintiffs' damages model (the "Model"), for an A-5
 24 conference receiving \$100 million in broadcast rights fees annually, Plaintiffs' expert witnesses
 25 suppose that the A-5 conference would have attributed \$10 million among scholarship student-
 26 athletes as follows: (1) \$7.5 million divided in equal shares among all football players; (2) \$1.5
 27

1 million divided in equal shares among all men's basketball players; (3) \$500,000.00 divided in
2 equal shares among all women's basketball players.

3 11. I further understand that, under the expert witnesses' Model and as a matter of
4 mathematics:

- 5 a. Larger portions of the broadcast rights revenues are attributable to each student-
6 athlete in conferences with fewer members;
- 7 b. Larger amounts of the broadcast rights revenues are attributable to each student-
8 athlete in conferences with higher broadcast rights revenues;
- 9 c. Equal portions of broadcast rights revenues are attributable to athletes who are high-
10 performing starters and low-performing athletes who rarely or ever play in a game;
- 11 d. Larger amounts of broadcast rights revenues are attributable to each men's
12 basketball player than each football player at a conference member as a result of the
13 difference in the number of scholarships available in football and men's basketball;
14 and
- 15 e. Much smaller amounts of broadcast rights revenues are attributable to each women's
16 basketball player than either each men's basketball player or each football player at
17 a conference member.

18 12. Baylor would not support or vote in favor of any rules or interpretations necessary
19 to implement the Model at the NCAA or A-5 conference level.

20 13. The assumption that the value of student-athlete NIL in a broadcast is 10% of the
21 broadcast's total value seems to me to be completely arbitrary. In my over 25 years of experience
22 in intercollegiate sports, I have never heard of a media partner, member school, or conference
23 discuss the value of a game or contest in two such parts—the value of the performance on the field
24 and the value of the student-athlete NIL.

25 14. In addition, I do not know any reason that all A-5 conferences would agree to pay
26 the same percentages to all scholarship student-athletes as the Model proposes. Public reports
27 indicate that the A-5 conferences' revenues differ greatly. A low-revenue conference would
28

1 therefore have every incentive to pay its student-athletes a greater percentage than competing
2 conferences to attract the best high-school and transfer athletes.

3 15. And from a recruiting perspective, the Model would have a potentially devastating
4 impact on the ability of schools in all but the richest conferences to recruit student-athletes out of
5 high school or transfers from the transfer portal to come to play at their schools. The Model bases
6 the amount that can be paid to student-athletes in each conference on a percentage of conference's
7 broadcast rights revenues. Therefore, the conference with the highest amount of revenues can
8 provide its student athletes with the highest payments. Although schools like Baylor offer student-
9 athletes the same or similar levels of other benefits as other universities, this level of differentiation
10 would absolutely put the schools in lower-revenue conferences at a significant economic
11 disadvantage in recruiting highly ranked prospects, which could well further negatively impact the
12 competitive balance between the schools in the highest- and in the lowest-resourced A-5
13 conferences, which would negatively impact college sports on the whole.

14 16. The Model also fails to take into account the individual needs of the schools and
15 universities that are within any particular A-5 conference. The revenues that the Big 12 receives
16 from its media rights partners are generated from a grant of rights from each member of the
17 conference to the Big 12 and therefore, in part, belong to the members also, even if they first flow
18 through the Big 12 before being distributed to the members of the Big 12 according to the Big 12
19 Bylaws. At Baylor, we use these revenues to fund all of the athletic department programs, not just
20 football and men's and women's basketball, and only Baylor can allocate them to achieve our
21 institution's unique priorities and to benefit all student-athletes in the athletic department.

22 17. Moreover, from my experience, it makes no logical sense for the Model to only
23 include payments for scholarship athletes. "Walk on" student-athletes often play a very valuable
24 role in the success of their team, and their NIL is just as much a part of a broadcast as the most
25 visible scholarship athletes. The Model also does not account for a student-athlete who leaves the
26 team or school during a season for personal reasons, loses his or her scholarship for any reason, or
27 is a walk on and then is awarded scholarship status during a season.

1 18. I am also concerned about the extra costs the Model would impose on Baylor's
2 sports programs. At Baylor, the Athletic Department strives to be financially self-sufficient, as any
3 subsidies it may receive from the University will adversely impact the University's overall budget.
4 The Model's increased expenses do not come with any additional incremental revenue to the
5 Athletic Department, so they would have to be funded with reductions in other Athletic Department
6 expenses like travel, academic services, mental and physical health, physical conditioning support,
7 character formation and our spiritual growth and mission programs, or by increased subsidies from
8 the University.

9 19. The ultimate result of this proposed Model could lead to Baylor having to decide
10 whether to eliminate sports program opportunities, which would disproportionately negatively
11 impact Olympic sports and reduce opportunities for all of our student-athletes. As noted above, the
12 resulting reduction in the athletic opportunities we offer to student-athletes in Olympics sports,
13 which have for decades been extremely important to Baylor athletics and the lifeblood of United
14 States Olympic teams, could have an overall negative effect on collegiate sports.

15 20. Opportunities for high school student-athletes also could be reduced if we adopted
16 the Model. Certain student-athletes will have an incentive to stay in school and extend their
17 eligibility to collect the additional payments for which the Model provides. This may delay or deny
18 high school players the opportunity to participate in certain sports at the collegiate level.

19 21. Finally, a key overriding tenet of Baylor's athletic program is that we believe we
20 have a duty to treat all our student-athletes fairly, so that they feel valued by their team, by our
21 broader sports enterprise and on our campus, from walk on to star player, no matter the sport. We
22 operate to provide personal, academic, and athletic opportunities. Reducing opportunities for our
23 student-athletes or changing how we care for our student-athletes would conflict with the cultural,
24 philosophical, and moral bedrocks of our athletics programs and of our University as a faith-based
25 institution.



Mack B. Rhoades IV

Signed April 25, 2023